IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1511 of 2004
In
SPECIAL CIVIL APPLICATION No. 2843 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALKRUSHNA NATVARLAL BHATT - Appellant(s)

Versus

VIRAMGAM MUNICIPALTIY - Respondent(s)

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Appearance :
MR VAIBHAV A VYAS for Appellant(s) : 1,
MR VK JOSHI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 20/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Heard Mr.Vyas for the appellant-workman. The appellant-original petitioner filed Special Civil Application No.2843/03 before this court and challenged the part of the impugned judgment and award passed by the Labour Court, Ahmedabad on 3.8.2002 in Reference (LCA) No.1136/80 (old case)- Reference (LCA) No.788/00 (new number) whereby the Labour Court ordered reinstatement of the petitioner in service at his original post, but given continuity of service only from 1.6.2002 by denying back wages till 24.6.2002. This part of the order by which the workman was not given continuity of service from the date on which he joined the services and denied back wages up to 1.6.2002 is challenged before the learned Singel Judge in the writ petition. Having gone through the judgment of the Labour Court, the learned Single Judge summarily dismissed the writ petition i.e. Special Civil Application No.2843/03 by his brief order dated 17.3.2003 after hearing the learned counsel for the petitioner-workman and perusing the record of the case as he was of the opinion that the petition was wholly misconceived. It is a brief order, which we would like to reproduce the same as under :-

"CORAM : MR.JUSTICE RAVI R. TRIPATHI

DATE OF ORDER : 17/03/2003

ORAL ORDER

"Heard the learned advocate and perused the record of the case. No case is made out for interference at the hands of this Court under Article 226 of the Constitution of India. The petition is misconceived. Hence the Special Civil Application is dismissed. No order as to costs

Sd/-

(Ravi R. Tripathi, J.)"

Learned counsel Mr.Vyas for the appellant vehemently submitted that once the Labour Court has come to the conclusion that the termination was illegal, then while ordering reinstatement in service he should have been given continuity in service the day on which his services were terminated and he should not have been denied back wages till 1.6.2002. On peculiar fats of this case, this submission of Mr.Vyas was totally misconceived. In absence of the reasoned order passed by the learned Single Judge while dismissing the writ petition we undertook the exercise of going through the impugned

judgment and award passed by the Labour Court. From the impugned award passed by the Labour Court, it is clear that though the case was old one of 1980, after filing the same before the Labour Court, the appellant-workman was constantly remaining absent and at last because of this, the case was dismissed for default in his absence. However, the Labour Court was kind enough to restore the case on an application for restoration filed by the workman. But even thereafter the workman remained totally negligent and did not remain present before the Labour Court for even deposing and on and often he used to give applications for adjournment of the case, which were granted by the Labour Court in the interest of justice. On a writ petition i.e. Special Civil Application No.2033 of 2001, this court issued directions to the Labour Court to dispose of the case within four months, but even after the case was remanded to the Labour Court by this court, the workman took almost 3 to 4 adjournments and when last warning was given to him to depose, then at last he appeared before the Labour Court for deposing on 24.6.2002. Considering the attitude of the workman, the Labour Court though found that termination of the workman was illegal did not grant continuity of services from the date on which his

services were terminated and also denied back wages to him up to 1.6.2002 because for the first time, he preferred to remain present and depose before the Labour Court on 24.6.2002 when he was compelled to appear before the Labour Court for deposition, otherwise on that day the matter would have been once again dismissed for default. Considering the fact that the case was old case and pending before it for 22 years, the Labour court rightly observed that it is impossible to believe that the workman would have survived without doing anything for last 22 years. The Labour Court also observed in its award that the delay of 22 years occurred in this case only because of the negligence of the workman himself. Accordingly, he was given continuity of service from 1.6.2002 and back wages from the date on which he deposed before the Labour court i.e. on 24.6.2002. When the Labour Court took just and reasonable view in the matter and passed balanced judgment, then we are of the considered opinion that no interference was called for in the writ petition by the learned Single Judge, who rightly dismissed the writ petition without assigning any reasons in his brief order dated 17.3.2003. When the learned Single Judge of this court refused to exercise his discretionary writ jurisdiction in favour of the

appellant-workman in a writ petition, then there is no question of interference in this appeal.

In view of the above discussion, this appeal fails and is hereby dismissed.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)

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